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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X
G.S., a minor below the age of 18, by her
father and natural guardian, MORRIS S.,

PLAINTIFFS,

-against- Case No.:
15-CV-3086(AAR)
(RER)

CONGREGATION LEV BAIS YAAKOV d/b/a LEV
BAIS YAAKOV HIGH SCHOOL; RIVKA ORATZ;
and SHMIEL DEUTSCH, a/k/a SAM DEUTSCH,

DEFENDANTS.
-----X

DATE: December 14, 2015
TIME: 10:10 A.M.

VIDEOTAPED DEPOSITION of the
Defendant, SHMIEL DEUTSCH, taken by the
Plaintiffs, pursuant to a Court Order and
to the Federal Rules of Civil Procedure,
held at the offices of The Berkman Law
Office, LLC, 111 Livingston Street, Suite
1928, Brooklyn, New York 11201, before
Yehudis Malek, a Notary Public of the State
of New York.

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A P P E A R A N C E S:

THE BERKMAN LAW OFFICE, LLC
Attorneys for the Plaintiffs
G.S., a minor below the age of 18,
by her father and natural guardian,
MORRIS S.
111 Livingston Street, Suite 1928
Brooklyn, New York 11201
BY: ROBERT J. TOLCHIN, ESQ.

RUTHERFORD & CHRISTIE, LLP
Attorneys for the Defendants
CONGREGATION LEV BAIS YAAKOV d/b/a LEV
BAIS YAAKOV HIGH SCHOOL; RIVKA ORATZ; and
SHMIEL DEUTSCH, a/k/a SAM DEUTSCH
800 Third Avenue
New York, New York 10022
BY: ADAM GUZIK, ESQ.

ALSO PRESENT:
SCOTT NOCELLA, Videographer

* * *

1 S. DEUTSCH

2 that happened in 10th grade in the -- from
3 September until December, when the school
4 year begins in September until December
5 that --

6 A. I don't think the cell phone
7 issue got any better. I think it --

8 Q. Are you just guessing?

9 A. I'm trying to recollect.
10 That's what I was told.

11 Q. Well, is there anything in the
12 documentation that documents whatever it is
13 you're talking about?

14 A. I don't know. I don't know.

15 Q. You say a call came in?

16 A. Yes.

17 Q. What was the call that came in?

18 A. According to the way I heard
19 the story, the secretary was answering a
20 call from a frantic woman, who has called a
21 few times, but the principals were not
22 available, until finally, I don't know if
23 it was the third or fourth or fifth call,
24 whenever it was, she did give the phone
25 over to the principal, Mrs. Sochaczski,

1 S. DEUTSCH

2 took the call, and the lady described that
3 she found on her son's cell an
4 inappropriate image of the plaintiff.

5 And I don't know if the
6 sequence is correct, but all in all this is
7 what happened. The principal asked that
8 they describe the plaintiff, because she
9 said, you know, "I want to make sure that
10 we're talking about the right person."

11 She told her the name, she
12 described her hair, she described her
13 weight, she described other features of
14 her, color hair, et cetera, et cetera, and
15 that was it.

16 And she also said, I assume it
17 was because of a question that the
18 principal posed to her, that "I cannot
19 relay the image to you because my husband
20 is an attorney and he advised me not to do
21 so because it's child pornography."

22 Q. So, you believed that this
23 woman was in possession of her son's cell
24 phone, which contained child pornography;
25 you believed that?

1 S. DEUTSCH

2 A. I believed that the lady was
3 sincere, I believed that my principals --

4 Q. I didn't ask you if you
5 believed the lady was sincere. You
6 believed that there was a picture of a
7 naked minor on this woman's son's phone --

8 A. I didn't say naked. It could
9 have been inappropriate. I don't know.

10 Q. Oh, okay, let's go back.
11 Inappropriate was all that
12 Mrs. --

13 A. I don't know.

14 Q. So, what did you understand --

15 A. You're putting words in my
16 mouth. I don't know.

17 Q. Okay, I withdraw that. I'm
18 sorry, I shouldn't have said. You're
19 right.

20 What was your understanding of
21 what the picture was? I made an
22 assumption. I shouldn't have done that.

23 A. All I know is what I was told.
24 It was an inappropriate picture.

25 Q. What does "inappropriate" mean

1 S. DEUTSCH

2 to you?

3 A. Not befitting a Bais Yaakov
4 student.

5 Q. So, she had her neck, her
6 collarbone exposed?

7 A. No.

8 Q. Does your school rule allow
9 collarbone to be exposed?

10 A. No.

11 Q. Does your school rule allow
12 short sleeves?

13 A. No, but --

14 Q. If a girl wore short sleeves,
15 that would be inappropriate, correct, for a
16 Bais Yaakov school?

17 A. Correct, correct.

18 Q. If a girl wore a skirt that's
19 above her knees, that's inappropriate for a
20 Bais Yaakov school, right?

21 A. You seem to be very well
22 versed.

23 Q. You agree with me?

24 A. Yes.

25 Q. And if a girl wore sandals with

1 S. DEUTSCH

2 no socks, that would be inappropriate for a
3 Bais Yaakov school, right?

4 A. Correct.

5 Q. A V-neck blouse is
6 inappropriate, correct?

7 A. (Witness shakes head.)

8 Q. You have to answer verbally.

9 A. Yes.

10 Q. How about pink nail polish, is
11 that inappropriate?

12 A. Any color nail polish --

13 Q. Is inappropriate?

14 A. (Witness shakes head.)

15 Q. So, a person in a Bais Yaakov
16 milieu could describe a girl wearing short
17 sleeve shirts and nail polish as being
18 inappropriately dressed?

19 A. I did not believe that.

20 Q. I'm asking you a question. The
21 word "inappropriate," as you use it in your
22 school, in your milieu, in your hashkafa,
23 could cover all those things?

24 A. Yes, it could.

25 Q. Now, you wouldn't make the

1 S. DEUTSCH

2 decision to expel a child from school
3 because she wore a short sleeve shirt,
4 would you?

5 A. No. Especially on a onetime
6 occurrence, no.

7 Q. If somebody said, "I have a
8 picture of a girl who attends your school
9 and she's wearing a short sleeve skirt -- a
10 short sleeve shirt, and I think that's
11 inappropriate for a Bais Yaakov girl,"
12 would that be grounds for expulsion?

13 A. No.

14 Q. So, you must have believed the
15 picture was worse than just something like
16 that, right?

17 A. I'm trying to find a better
18 word.

19 Q. Well, I'm trying to understand
20 what, A, what you believed this picture
21 was, and B, what was your basis for
22 believing that. So far all you told me is
23 that the picture was quote, unquote,
24 inappropriate.

25 MR. GUZIK: Do you have a

1 S. DEUTSCH

2 question, Counselor?

3 MR. TOLCHIN: Yes.

4 MR. GUZIK: What is it?

5 MR. TOLCHIN: I just asked it.

6 Q. Please answer.

7 MR. GUZIK: You didn't. You
8 didn't -- you didn't ask a question.
9 Read it back.

10 Q. Please answer the question.

11 A. What was the question?

12 Q. I'm trying to understand --

13 MR. GUZIK: No, that's not a
14 question. "I'm trying to understand"
15 is not a question. Ask a question,
16 Counselor.

17 MR. TOLCHIN: What do you
18 actually think that kind of objection
19 achieves?

20 MR. GUZIK: A clear record.

21 MR. TOLCHIN: So, what you say
22 is "objection as to form," and then
23 once you've noted that objection, if
24 the question isn't a good question,
25 well guess what, I'm not going to be

1 S. DEUTSCH

2 able to read it at trial and you will
3 have won the issue.

4 MR. GUZIK: Wonderful.

5 MR. TOLCHIN: So, by getting
6 into this kind of silly bickering
7 you're actually setting yourself
8 back. All you're doing is making me
9 rephrase the question and making the
10 question better --

11 MR. GUZIK: Please do.

12 MR. TOLCHIN: -- and then
13 you're improving the record for trial
14 for me, so I can't fathom why you
15 would want to do that, other than to
16 interrupt things, which is an
17 improper purpose.

18 Q. What did you believe the
19 picture depicted that this caller said she
20 found on her son's phone?

21 MR. GUZIK: Thank you,
22 Counselor.

23 A. Something that would not -- I
24 don't know what the right word is.
25 Obviously, a lot worse than having a neck

1 S. DEUTSCH

2 bone open.

3 Q. But what, specifically?

4 A. I don't know. I just put the
5 facts together, and the mother crying
6 hysterically over the phone describing that
7 she found a very, I don't know what other
8 word to use other than inappropriate, but
9 you're trying to equate inappropriate with
10 a skirt above the knee, which is --

11 Q. I don't know what it is. Is it
12 a fact you didn't know what it was either?

13 As you sat there that day --

14 A. I know it wasn't as docile as
15 all the descriptions you told me, with the
16 collarbone and the short skirt and the
17 elbows, et cetera, et cetera. Obviously,
18 it was graver than that, and I believed
19 that, yes.

20 Q. You didn't speak to the caller,
21 right?

22 A. No, I did not.

23 Q. So, what you went on when you
24 made the decision was, am I correct that
25 Mrs. Sochaczski spoke to the caller?

1 S. DEUTSCH

2 A. Yes, and she genuinely
3 believed --

4 Q. And Mrs. Sochaczski believed
5 the caller?

6 A. Correct.

7 Q. But you agree with me
8 Mrs. Sochaczski did not know who the
9 caller was, correct?

10 A. Correct.

11 Q. Now, do you know that
12 Mrs. Sochaczski had the -- had access to
13 the caller's phone number?

14 A. No.

15 Q. The school has caller ID,
16 doesn't it?

17 A. Some form, yes. Most phones
18 do.

19 Q. And when the caller was talking
20 to Mrs. Sochaczski, the caller's phone
21 number appeared on Mrs. Sochaczski's
22 phone, didn't it?

23 A. I don't know.

24 Q. Mrs. Sochaczski said that it
25 did.

1 S. DEUTSCH

2 A. So, why didn't she record it?

3 Q. Good question.

4 A. I don't know. She was taken
5 aback, I guess.

6 Q. She didn't write down the
7 woman's number.

8 A. She was --

9 Q. Now, you know that the school
10 has caller ID, doesn't it?

11 A. I don't have it in my office
12 and I'm on the same network.

13 Q. You don't have caller ID on
14 your phone?

15 A. No, no.

16 Q. When callers call you don't see
17 the number, like everyone else in the
18 world?

19 A. No. I don't know if that was
20 done intentionally by the IT, by the guy
21 who installed the phones or what, but it
22 doesn't have it.

23 Q. Do you know that --

24 A. The main office has.

25 Q. And you know that?

1 S. DEUTSCH

2 A. The main office, yes.

3 Q. Right.

4 So, when they came to you about
5 this issue, did you think to call back the
6 woman and try to assess it for yourself?

7 A. No. This was hours and hours
8 afterward.

9 Q. So what? How many hours
10 afterward?

11 A. Quite a few.

12 Q. Really? What time of day was
13 the call?

14 A. I don't know exactly.

15 Q. Morning, afternoon, evening?

16 A. I'm -- I'm not sure. You want
17 me to conjecture?

18 Q. No. I want to know what you
19 know, and if you don't know I want you to
20 say "I don't know."

21 A. They said it came in during the
22 day. I don't know what time.

23 Q. The caller had called several
24 times during the day, you say?

25 A. Yes.

1 S. DEUTSCH

2 Q. And not just one right after
3 the other. There were gaps, right?

4 A. I don't know. I don't know if
5 she called one after the other or not. She
6 was desperate to reach a principal. That's
7 the impression that I got from --

8 Q. Mrs. Sochaczski teaches
9 classes besides being the principal, right?

10 A. Yes.

11 Q. Would that be a reason why they
12 couldn't reach her?

13 A. Possibly.

14 Q. Mrs. Oratz also teaches
15 classes?

16 A. Yes, she does.

17 Q. What time of -- well, how did
18 you become aware of this call?

19 A. It was late, late afternoon,
20 prior to dismissal. Principals called me
21 that they have something very important to
22 discuss, can they come down.

23 Q. Okay.

24 A. I said absolutely.

25 Q. Who came down?

1 S. DEUTSCH

2 A. Both.

3 Q. Mrs. Oratz and
4 Mrs. Sochaczski?

5 A. Correct.

6 Q. And what you said, it was just
7 prior to dismissal?

8 A. Yes. I would say it was
9 between 4:00 and 6:00 p.m., 5:00 to
10 6:00 p.m.

11 Q. What did they tell you?

12 A. Exactly what I told you before.
13 That the call came in, we tried to get as
14 much information as possible, description,
15 et cetera, et cetera, and obviously it's a
16 serious matter that could affect the girls
17 of the school and something has to be done.

18 Q. Is that it?

19 A. No. Then we discussed.

20 Q. What else did they tell you?

21 A. I asked questions, you know,
22 past, et cetera, et cetera, we discussed a
23 lot of issues, and I said, "Fine, I will
24 make a decision overnight," which I did,
25 and then they were -- they were told to

1 S. DEUTSCH

2 call the parents down, not to send the
3 daughter to school until --

4 Q. Who was told?

5 A. The parents of the plaintiff.

6 Q. When were they told that?

7 A. I don't know if it was that
8 same evening or in the morning. I really
9 don't know, because it wasn't done from my
10 office.

11 Q. If it was that same evening,
12 then you weren't making your decision
13 overnight, were you?

14 A. What? Their coming to the
15 office did not mean anything yet at that
16 point.

17 Q. What was the description --
18 withdrawn.

19 Did Mrs. Sochaczski tell you
20 what was the description that the frantic
21 woman gave her of the girl in the picture?

22 MR. GUZIK: Objection.

23 Q. Do you understand the question?

24 A. I'm trying to think if she gave
25 me a description. You're talking about

1 S. DEUTSCH

2 religious women talking to a man. I don't
3 believe that they really described the --

4 Q. You told me --

5 A. -- the picture.

6 Q. A minute ago you said that the
7 principal told you that she asked the woman
8 on the call to describe the person in the
9 call -- in the picture.

10 A. Correct.

11 Q. And what description was --

12 A. Given?

13 Q. -- was given?

14 A. She had blond curly hair, big,
15 long, blond curly hair, very heavysset, I
16 think it was blue eyes was also part of the
17 description, I'm not sure, the name, first
18 name she said.

19 Q. The name wasn't in the picture,
20 was it?

21 A. Hmm?

22 Q. The name wasn't in the picture?

23 A. No, but that was one of the
24 questions that was asked from the parent,
25 and she said, "I know the first name is

1 [REDACTED] S. DEUTSCH

2 [REDACTED]

3 Q. Because her son said so?

4 A. Right. Obviously, she wouldn't
5 know.

6 Q. Wouldn't you agree with me that
7 anybody who knew the plaintiff would know
8 what she looked like?

9 A. Yes, of course.

10 Q. Right?

11 So, if I've met the plaintiff,
12 I could say she's blond and blue eyed and
13 heavyset. It doesn't mean I have any
14 picture of her in my cell phone, does it?

15 A. I had to make a decision based
16 on the facts.

17 Q. I'm asking you a question, not
18 to just ramble on.

19 A. You're saying hypothetical
20 stuff. "It doesn't mean, it could mean, it
21 could mean, if you knew her or you didn't
22 know her," you know, of course.

23 Q. You knew the plaintiff had
24 blond hair, right?

25 A. Yes, I did.

1 S. DEUTSCH

2 Q. And you knew she had blue eyes,
3 right?

4 A. I still don't know if the blue
5 eyes, if that's the correct description.

6 Q. You knew she was heavysset,
7 right?

8 A. Yes.

9 Q. So that you could have given
10 the same description, without any
11 inappropriate picture in your phone,
12 correct?

13 A. Correct.

14 Q. Isn't it a fact that anybody
15 who wanted to make trouble for the girl
16 could have called and made that call and
17 said, "I have this picture here, and yes,
18 you want a description, I'll give you a
19 description, she's blond, blue eyed and
20 heavysset," and you, sitting there making
21 the decision to expel her, would not know
22 if that call was real or just a crank?

23 MR. GUZIK: Objection.

24 Q. Would you?

25 A. You could twist any situation.

1 S. DEUTSCH

2 Q. It's not twisting.

3 A. "You could have, you should
4 have, anybody would know." Sure, if --

5 Q. It was an anonymous call,
6 correct?

7 A. It was an anonymous call.

8 Q. Did you ever -- as you sit here
9 today, do you know the name of the caller?

10 A. I have no idea.

11 Q. Have you done any investigation
12 to try to figure out who it was?

13 A. We did try.

14 Q. How did you try?

15 A. There was somebody that hinted
16 sort of that they may know the individual,
17 and it --

18 Q. It was a dead end?

19 A. It was a dead end.

20 Q. And you never saw the picture?

21 A. No.

22 Q. And nobody saw the picture,
23 correct?

24 A. In our school.

25 Q. Nobody in your school saw the

1 S. DEUTSCH

2 picture?

3 A. Correct.

4 Q. And you don't even know if
5 there was a picture, correct?

6 A. If I didn't see it obviously I
7 don't know, correct.

8 Q. And nobody who you know saw it,
9 correct?

10 A. Correct.

11 Q. All you had was a voice on the
12 phone claiming that there was a picture,
13 correct?

14 A. Correct, and based on those
15 facts --

16 Q. And you don't even know what
17 was in the picture specifically?

18 A. Specifically, no, but I know it
19 was more than an open collarbone.

20 Q. When somebody says it was an
21 inappropriate picture, you agree that could
22 cover a whole range of issues, correct?

23 A. Okay, but obviously that's not
24 what was indicated by whoever was on the
25 phone to Mrs. Sochaczski.

1 S. DEUTSCH

2 Q. Well, what was indicated on the
3 phone to Mrs. Sochaczski?

4 A. That it was --

5 Q. Use words. We're all grownups.

6 A. I know, but --

7 MR. GUZIK: Counselor.

8 Q. You don't have to feel like you
9 have to hide something because there's
10 little kids present. We're lawyers, we're
11 grownups.

12 A. They didn't tell me exactly the
13 words that the lady said simply because, I
14 mean, there is a certain amount of modesty
15 between a 60-year old principal talking to
16 a man who she's not related to, but
17 obviously the description was that it was a
18 sexy picture or, I don't know, something
19 beyond just an open collarbone. It was
20 more.

21 Q. You're telling me
22 Mrs. Sochaczski wouldn't tell you what the
23 caller said because she was nervous to say
24 a body part to a man?

25 A. She didn't -- you're saying two

1 S. DEUTSCH

2 things in one sentence. She did tell me
3 what the caller said --

4 Q. Which is what?

5 A. -- but she did not describe the
6 image.

7 Q. Well, did she tell you that the
8 caller --

9 A. But she did say the image was
10 not --

11 Q. Did she tell you that the
12 caller had described the image to her?

13 A. Yes, I believe she did, yes.

14 Q. Did you ask her, "Well, what
15 was the image that was described to you"?

16 A. No, I had no interest.

17 Q. It didn't matter to you?

18 A. No, it did not. It did not.

19 Q. It didn't matter to you what
20 was actually in that picture?

21 A. No. I knew it was bad enough
22 to require action.

23 Q. Without knowing who it was who
24 was being frantic, you had a frantic
25 caller, but you don't know who it is,

1 S. DEUTSCH

2 right?

3 A. Correct.

4 Q. That frantic caller might have
5 been a crazy person, right?

6 MR. GUZIK: Objection.

7 A. I have no idea.

8 Q. The frantic caller might have
9 been somebody who is very fanatical about
10 their modesty and their religious
11 observance?

12 MR. GUZIK: Objection.

13 A. That frantic caller could have
14 been telling the truth.

15 Q. But you don't know. You don't
16 know whether -- did you do anything to
17 investigate whether what the frantic caller
18 said was true?

19 MR. GUZIK: Objection, asked
20 and answered.

21 A. I answered that already.

22 MR. TOLCHIN: No, he didn't.

23 MR. GUZIK: Yes, he did. We
24 can read it back if you'd like.

25 Q. You can tell me again.

1 S. DEUTSCH

2 A. No, I did not do any
3 investigation.

4 Q. Did you ask the plaintiff to --
5 that you look at her phone to see if there
6 was such a picture in her phone?

7 A. I had no -- no, I did not.

8 Q. Did you ask your IT person
9 whether it was possible to determine if
10 this had happened, as a forensic matter?

11 A. No, I didn't.

12 Q. You told us that one of the
13 hashkafic parameters of the school is
14 shemirat halashon, right, and that includes
15 not listening to lashon hara, you told us,
16 right, yet an anonymous caller calls you up
17 and tells you about a picture that you
18 haven't seen, uses vague words to describe
19 it, and you choose to believe the worst?

20 A. I didn't say it was vague.

21 Q. You said it was inappropriate.
22 That's all you know that was in the
23 picture.

24 A. For lack of a better word. I
25 know it was more than just an open

1 S. DEUTSCH

2 collarbone, like you described. You're
3 putting words in my mouth, Counselor.

4 Q. So, what do you believe -- what
5 do you believe was in the picture?

6 A. Improper picture.

7 Q. What does that mean to you?

8 A. Maybe half naked --

9 Q. Maybe?

10 A. -- maybe all naked --

11 Q. Maybe?

12 A. I don't know.

13 Q. You don't know?

14 A. I don't know.

15 Q. But you chose to believe the
16 worst?

17 A. Yes, based on --

18 Q. Isn't that a violation of the
19 school's hashkafic parameters, as you
20 described them?

21 A. No.

22 Q. No; why not?

23 A. I'll tell you why not. Lashon
24 hara and whatever you're trying to
25 insinuate applies to one individual.

1 S. DEUTSCH

2 You're hurting him for no reason at all.
3 Here we're talking about infecting 150
4 other girls on the same floor. It's a big
5 difference, big difference.

6 I had to make a move based on
7 the information I had because of the effect
8 that it could have had, detrimental effect
9 that it could have had on the rest of the
10 high school.

11 Q. So, that's why you chose to
12 make a decision without any investigation?

13 A. I didn't say that.

14 Q. You did.

15 A. No, I didn't.

16 Q. You said you made a decision
17 without conducting any investigation.

18 A. Okay, that was a byproduct. I
19 didn't say that I did it because I didn't
20 investigate. No, don't try to put words in
21 my mouth. I'm trying to cooperate with you
22 the best I can, but don't plant it.

23 Q. You're doing a good enough job
24 putting words in your own mouth.

25 MR. GUZIK: Objection.

1 S. DEUTSCH

2 Q. How do you know it wasn't a kid
3 calling on the phone just to get the
4 plaintiff in trouble?

5 A. I don't know.

6 Q. How do you know it wasn't a
7 parent who had a beef with the girl's
8 family, didn't like her father, didn't like
9 her mother, and wanted to make problems for
10 them; how do you know that didn't happen?

11 A. I don't know.

12 Q. Did you consult Rabbi Dovid
13 Cohen about what you should do in this
14 situation?

15 A. No.

16 Q. Did you consult Rabbi
17 Kamenetsky about what to do in this
18 situation?

19 A. No.

20 Q. Would you agree that if there
21 was an inappropriate picture of the
22 plaintiff being circulated on cell phones,
23 that just logically that would mean either
24 someone took the picture of the plaintiff
25 or the plaintiff took it of herself, right?

1 S. DEUTSCH

2 A. I guess, correct.

3 Q. At the time the plaintiff was a
4 minor, correct?

5 A. Yes.

6 Q. In fact, did you think that
7 looking at the picture was a problem, even
8 if you had it, because of this child
9 pornography issue?

10 A. I personally didn't want to see
11 it, yes, for my own reasons. Nothing to do
12 with --

13 Q. What about if Mrs. Oratz or
14 Mrs. Sochaczski had looked at it, or even
15 the plaintiff herself or her mother, just
16 to verify that it's her?

17 A. What's the question again?

18 Q. Would you agree that that
19 would -- you would be concerned about child
20 pornography, about violating laws against
21 child pornography to look at that picture?

22 A. No.

23 Q. No, you wouldn't be concerned?

24 A. (Witness shakes head.)

25 MR. TOLCHIN: We have to change

1 S. DEUTSCH

2 the tape here.

3 THE VIDEOGRAPHER: Time now is
4 2:58 p.m. We're going off the record
5 for break.

6 (Whereupon, a brief recess was
7 taken.)

8 THE VIDEOGRAPHER: The time now
9 is 3:08 p.m. We are back on the
10 record from break.

11 BY MR. TOLCHIN:

12 Q. Sir, if somebody took a picture
13 of the plaintiff, who was a minor, that was
14 inappropriate, is it possible that somebody
15 was victimizing her?

16 MR. GUZIK: Objection. Calls
17 for speculation.

18 Q. You can answer.

19 A. I have no idea.

20 Q. If a minor appears in a naked
21 picture, just assume it was naked for the
22 sake of argument, if somebody took that
23 picture, isn't it possible the minor was
24 being victimized?

25 MR. GUZIK: Objection. Calls

1 S. DEUTSCH

2 for speculation.

3 Q. You don't know?

4 A. No.

5 Q. No, you don't know?

6 A. She could have taken the
7 picture herself.

8 Q. I said if somebody took the
9 picture.

10 MR. GUZIK: That's a
11 hypothetical. That's an improper
12 question.

13 Q. But we already began by saying
14 before the break that there were two
15 possibilities; either she took it herself
16 or somebody else took it. Now we're
17 breaking that down.

18 MR. GUZIK: If you want to ask
19 him if he knows --

20 MR. TOLCHIN: Please don't
21 coach the witness.

22 MR. GUZIK: I'm not coaching
23 him any.

24 MR. TOLCHIN: You are.

25 MR. GUZIK: No, you're making

1 S. DEUTSCH

2 up -- you're making improper
3 hypothetical questions.

4 If you want to call the judge,
5 feel free, but I'm not going to let
6 him answer hypothetical questions.

7 MR. TOLCHIN: Put your arm
8 down, stop waving your arm around.
9 Stop waving your arm around --

10 MR. GUZIK: I'm not waving my
11 arm around.

12 MR. TOLCHIN: -- stop raising
13 your voice, and stop giving speaking
14 objections.

15 MR. GUZIK: You raised your
16 voice, and I'm not going to allow him
17 to answer improper hypothetical
18 questions when he is a fact witness
19 and not an expert witness.

20 MR. TOLCHIN: You have no right
21 to direct the witness not to answer
22 any question, and you know that.

23 MR. GUZIK: Well, then you can
24 call the judge about it. Go ahead,
25 call the judge. He's not going to

1 S. DEUTSCH

2 answer.

3 MR. TOLCHIN: You're directing
4 him not to answer?

5 MR. GUZIK: It's a hypothetical
6 question, it's improper, and he's not
7 an expert witness, he's a fact
8 witness.

9 MR. TOLCHIN: Okay, but what
10 rule of evidence are you relying on?

11 MR. GUZIK: You can ask him --

12 MR. TOLCHIN: State the rule.
13 State the rule that you're relying
14 on.

15 MR. GUZIK: You can ask him --

16 MR. TOLCHIN: Tell me the rule
17 of evidence you're relying on,
18 Counselor.

19 MR. GUZIK: You can ask him if
20 he knows whether someone else took
21 the picture or she took it herself.

22 MR. TOLCHIN: You can ask him
23 that.

24 MR. GUZIK: No, thank you. I'm
25 not taking his deposition, you are,

1 S. DEUTSCH

2 and you're allowed to ask him proper
3 fact witness questions, and he's not
4 going to answer hypotheticals. Call
5 the judge.

6 MR. TOLCHIN: You are allowed
7 to say at this deposition the word
8 "objection." You are allowed to say
9 "objection as to form." You are
10 allowed to say "don't answer that" if
11 I've asked a privileged question.
12 Every other objection that you might
13 think of is reserved for the time of
14 trial.

15 If you think I'm asking a
16 question that's hypothetical and that
17 it shouldn't be read in front of the
18 jury, then you will make that
19 objection when we are in court in
20 front of the jury and the judge will
21 rule for you or he will rule for me.

22 You do not have authority to
23 direct the witness not to answer a
24 question unless I'm asking something
25 that involves privilege. That's the

1 S. DEUTSCH

2 federal rules.

3 MR. GUZIK: I'm not going to
4 let him answer any hypothetical
5 questions.

6 MR. TOLCHIN: Off the record.

7 THE VIDEOGRAPHER: Time now is
8 3:11 p.m. We are going off the
9 record.

10 MR. TOLCHIN: You know what
11 we're going to do, we're going to go
12 back on the record. I'm going to add
13 it to my collection. We're going to
14 call the judge with a litany.

15 THE VIDEOGRAPHER: We are still
16 on the record. It is now 3:12 p.m.

17 BY MR. TOLCHIN:

18 Q. When you made the decision to
19 expel the plaintiff, were you concerned
20 that somebody might have taken an
21 inappropriate picture of her?

22 A. No.

23 Q. Why were you not concerned that
24 somebody might have taken an inappropriate
25 picture of her?

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2 A. Because I told you my decision
3 was based solely on history and the
4 credibility of my principals believing that
5 it was a genuine call, and the way it was
6 portrayed to me is that there was the
7 plaintiff involved and another young man,
8 maybe a year or two younger, maybe a year
9 older, but certainly a minor as well. Why
10 would I think that there was an adult, or
11 whatever you're trying to insinuate?

12 Q. Did you make the assumption
13 that this young man received the picture
14 from the plaintiff?

15 A. I didn't make the assumption.
16 I believed what the principals told me and
17 based my decision on that.

18 Q. What did the principals tell
19 you about whether the plaintiff had sent
20 this picture to this young man; did they
21 tell you anything about that?

22 A. Yes, that the mother, stressed
23 out and crying over the phone, saw a
24 picture of this young lady on her son's
25 phone, she wants to put a stop to it,

1 S. DEUTSCH

2 doesn't want to get him into trouble, and
3 she's calling the school to do whatever
4 they have to do, period.

5 And I believe the principals
6 took that call very seriously, and that
7 they believed the call was genuine, and
8 that's the way it was relayed to me, and
9 based on those facts, with the other ones
10 that I gave you, I made my decision.

11 Q. What question do you believe
12 you're answering by all of that repetition
13 of your mantra; what was the question that
14 you think you just answered?

15 A. Do I believe there was somebody
16 else involved in the picture, so I'm
17 telling you.

18 Q. That wasn't the question. Now
19 let's try to focus on the question.

20 MR. TOLCHIN: Move to strike
21 everything he just said as
22 nonresponsive.

23 Q. Let's try to focus on the
24 question. You had a frantic woman who
25 called who said she found a picture on her

1 S. DEUTSCH

2 son's phone.

3 Now, did that frantic woman
4 tell Mrs. Sochaczski that -- how that
5 picture got on her son's phone?

6 A. I don't know.

7 Q. As you sit here today, do you
8 know how the picture got on her son's
9 phone?

10 A. No.

11 Q. If there was a picture on a
12 boy's phone, does that mean that the
13 picture was sent to him by the plaintiff?

14 MR. GUZIK: Objection. Calls
15 for speculation.

16 Q. You can answer.

17 A. I'm -- I don't know, but I --

18 Q. It could be somebody else sent
19 it to him, right?

20 MR. GUZIK: Objection. Same
21 thing. This is exactly what we were
22 talking about.

23 Q. You can answer.

24 MR. GUZIK: Don't answer.

25 Q. You can answer.

1 S. DEUTSCH

2 MR. GUZIK: Don't answer. Put
3 it on the list.

4 MR. TOLCHIN: We're calling the
5 court now. I'm getting the number.
6 You can't just decide that questions
7 are -- call for speculation and
8 direct the witness not to answer the
9 question.

10 THE VIDEOGRAPHER: Time now is
11 3:15 p.m. Going off the record for
12 break.

13 (Whereupon, an off-the-record
14 discussion was held.)

15 THE VIDEOGRAPHER: The time now
16 is 3:20 p.m. We are back on the
17 record from break.

18 BY MR. TOLCHIN:

19 Q. Do you have any information as
20 to whether the alleged young man received
21 the alleged photograph from the plaintiff?

22 A. No.

23 Q. Do you know one way or the
24 other whether the alleged young man
25 received the alleged photograph from

1 S. DEUTSCH

2 somebody else?

3 A. No.

4 Q. You said a few minutes ago that
5 the mother who was calling did not want to
6 get her son in trouble. Do you recall
7 giving that testimony?

8 A. Yes, I do.

9 Q. What did you mean by that?

10 A. Exactly what it implies.
11 That's what I was told the mother said to
12 the person who took the phone call.

13 Q. She didn't want her son's
14 school to find out that he had this
15 picture?

16 A. Correct.

17 Q. Is that correct?

18 A. Correct.

19 Q. But it didn't bother her to
20 call the girl's school about the picture;
21 is that correct?

22 A. I was not in her brain. I have
23 no idea.

24 Q. Did you ask yourself why if she
25 was so concerned she didn't call the girl's

1 S. DEUTSCH

2 mother?

3 A. I --

4 Q. You didn't ask yourself that,
5 did you?

6 A. No, I did not.

7 Q. Would you agree that if she had
8 called the girl's mother and told the
9 mother what she found and handled the
10 situation that way, then the plaintiff
11 would not have gotten in trouble with her
12 school, with Lev Bais Yaakov, correct?

13 A. Those -- those are not things
14 that I thought about at that time.

15 Q. You didn't think that?

16 A. No.

17 Q. So, it didn't register in your
18 mind that this mother, who was being so
19 protective of her son who had a naked
20 picture of a girl, or an inappropriate
21 picture of a girl, in the same breath, at
22 the same time, was trying to protect her
23 child, while getting somebody else's child
24 in trouble, that didn't enter your mind?

25 A. No.

1 S. DEUTSCH

2 Q. And you didn't think that,
3 "Hey, if that's what's going on here, maybe
4 there's something wrong with this caller,
5 maybe it's not true;" you didn't think
6 about that, it didn't cause you to doubt?

7 A. No. I believed the
8 principals --

9 Q. You believed that the prin --
10 you believed that -- you believed that the
11 principal believed it?

12 A. Yes.

13 Q. But you don't know if the
14 principal was right in believing it?

15 A. That's always a possibility.

16 Q. Right.

17 But you didn't say to her, for
18 example, "Look, I didn't get this call, you
19 got it, so you make the decision"?

20 A. No, I did not say that.

21 Q. Did you ask the principal, the
22 English principal or the Hebrew principal,
23 what they thought should be done in this
24 situation?

25 A. No.

1 S. DEUTSCH

2 Q. Even though the principals are
3 almost always the ones who make
4 disciplinary decisions in the school,
5 correct?

6 A. Correct.

7 Q. You didn't even ask them what
8 they thought?

9 A. No, I didn't.

10 Q. No?

11 A. No.

12 Q. Were you concerned that
13 possibly somebody was manipulating or
14 taking advantage of the plaintiff?

15 A. No.

16 Q. Have you ever heard of a
17 situation where children have been
18 manipulated into doing things that they
19 really shouldn't do in good judgment?

20 A. By adults?

21 Q. By adults.

22 A. Sure. You hear it every day.

23 Q. Have you heard of people
24 manipulating teenage girls over the
25 internet to send pictures of themselves?

1 S. DEUTSCH

2 A. Yes.

3 Q. Have you heard of people
4 manipulating teenage girls over the
5 internet even to meet up with adults for
6 improper purposes?

7 A. Yes.

8 Q. For sexual purposes?

9 A. Yes.

10 Q. You've heard of that?

11 A. Yes, I have.

12 Q. You've heard of adults tricking
13 or deceiving teenage girls, "Send me a
14 picture, meet me;" you've heard of that,
15 yes?

16 You have to answer verbally.

17 A. Yes, yes.

18 Q. When you heard that somebody
19 had this improper picture, this
20 inappropriate picture of the plaintiff,
21 were you concerned that maybe this was
22 happening to the plaintiff?

23 A. No.

24 Q. Did Mrs. Sochaczski tell you
25 that the caller had a husband who was a

1 S. DEUTSCH

2 lawyer and said that this picture is child
3 pornography, yes?

4 A. Yes.

5 Q. Were you concerned that there
6 was a pornographic picture of one of your
7 students circulating on the internet?

8 MR. GUZIK: Objection.

9 A. No.

10 Q. No?

11 A. (Witness shakes head.)

12 Q. Did you call the police --

13 A. No.

14 Q. -- and say, "Somebody has a
15 pornographic picture of one of my teenage
16 girls in my school"?

17 A. No.

18 Q. No?

19 A. No.

20 Q. As the head of a school, aren't
21 you a mandatory reporter?

22 A. When there is what to report,
23 yes.

24 Q. Oh, you didn't think there was
25 something to report?

1 S. DEUTSCH

2 A. Not based on the facts that I
3 was given.

4 Q. Why wasn't there something to
5 report? You have a pornographic picture of
6 an underage girl being sent over phone to
7 the internet, why wasn't that something to
8 report?

9 A. It wasn't -- there was no
10 internet. We're talking about phones.

11 MR. GUZIK: Calm down,
12 Counselor. You don't need to yell.

13 Q. It's all being sent over
14 phones?

15 A. Yes. What I --

16 Q. So, people sending a
17 pornographic picture --

18 A. A boy and maybe to another
19 friend of his.

20 Q. Oh, so two boys? Where did
21 this other boy come from? That wasn't in
22 your story before.

23 Where did you hear about this
24 other boy, this friend of his; where did
25 you get that from?

1 S. DEUTSCH

2 MR. GUZIK: Keep your voice
3 down, Counselor.

4 Q. Where did that come from?

5 A. I don't know.

6 Q. Who told you that?

7 A. I can't recollect.

8 Q. Did Mrs. Sochaczski tell you
9 there was another boy involved?

10 A. No.

11 Q. Did you make that up?

12 A. I don't --

13 Q. Did you imagine it?

14 A. No.

15 Q. When you say another boy
16 involved, what do you mean?

17 A. I retract that. I retract
18 that.

19 Q. Did you mean that maybe one boy
20 passed a picture to his friend, is that
21 what you meant?

22 A. No.

23 Q. What did you mean? You meant
24 nothing?

25 A. Nothing.

1 S. DEUTSCH

2 Q. Are there people within the
3 Brooklyn Jewish community who trick or
4 deceive teenage girls to send pictures of
5 themselves over the internet?

6 A. That, I have no idea.

7 Q. You've never heard of anything
8 like that?

9 A. Yes, I've heard.

10 Q. What have you heard?

11 A. There are incidents.

12 Q. Are there incidents of even
13 60-year old rabbis who try to get teenage
14 girls to meet them for sexual activity?

15 A. Yes.

16 Q. That happens?

17 A. Yes.

18 Q. Even among people you know?

19 A. People I know?

20 Q. Yes. People in your community.

21 A. I guess it happened. Could
22 happen.

23 Q. But it can happen?

24 A. It can happen.

25 Q. Rabbi Nathan David Rabinowich

1 S. DEUTSCH

2 comes to mind, right?

3 A. Right.

4 Q. That happened?

5 A. Right.

6 Q. And you know him?

7 A. Yes.

8 Q. You even made a parlor meeting
9 for him in your house once, didn't you, to
10 raise money for some school he started?

11 A. How many years ago?

12 Q. I don't know.

13 But you know him?

14 A. I haven't seen him in 25 years,
15 yes, but I know him.

16 Q. He pleaded guilty to seducing a
17 14-year old girl for sex over the internet,
18 right? That was big news. You heard it.

19 A. I know there was an issue. I
20 didn't know the details.

21 Q. His aunt lived right across the
22 street from you until she died, right,
23 Mrs. Friedman?

24 A. Yes.

25 Q. And his mother lived right

1 S. DEUTSCH

2 around the corner from you, right, until
3 she moved a few blocks away?

4 A. Correct.

5 Q. If there was an inappropriate
6 picture of the plaintiff, weren't you
7 worried that somebody might have tricked
8 her into sending that picture against her
9 better judgment?

10 A. No.

11 Q. You didn't feel any
12 responsibility to look out for her welfare,
13 did you?

14 A. This was not an internet issue.
15 This was a phone. Somebody sent one
16 from -- a picture from one phone to the
17 other.

18 Q. How do you know that?

19 A. Because that's what I was told.

20 Q. You were told there was a
21 picture in the boy's phone?

22 A. Right. The internet never came
23 up.

24 Q. Who told you how the picture
25 got to the boy's phone?

1 S. DEUTSCH

2 A. Nobody.

3 Q. So, how do you know it didn't
4 come over the internet?

5 A. I don't know.

6 Q. Did it come over a text
7 message?

8 A. I have no idea.

9 Q. Did it come over Whatsapp?

10 A. I have no idea.

11 Q. Did it come over Snapchat?

12 A. I don't even know what that is.

13 Q. Did it come by e-mail?

14 A. I have no idea.

15 Q. You have no idea, so when you
16 sit here adamantly saying, "We're not
17 talking about internet, we're talking about
18 phone," you don't know that it didn't come
19 over the internet, do you?

20 A. No, I don't.

21 Q. Phones have internet sometimes,
22 right?

23 A. Yes.

24 Q. So, if the picture is in the
25 phone it might have come over the internet,

1 S. DEUTSCH

2 correct?

3 A. Possibly, yes.

4 Q. Have you ever heard of somebody
5 taking a picture of a woman or a girl while
6 she's changing in a locker room?

7 A. In a school?

8 Q. Anywhere, yes, in a school.

9 A. No.

10 Q. That can't happen? Locker
11 room, bathroom, changing room, any kind of
12 a peeping Tom, have you heard of situations
13 where that happens?

14 A. Yes.

15 Q. It could happen in -- it could
16 happen at the changing room at Century 21.
17 Somebody puts a little camera, nobody
18 notices. It could happen, right?

19 A. Yes.

20 Q. Every year you hear on the news
21 they caught somebody in the locker room at
22 Jones Beach with a camera. You heard
23 things like that?

24 A. Yes.

25 Q. You've heard about the rabbi at

1 S. DEUTSCH

2 the mikvah in Washington who put a camera
3 and a clock radio and photographed women
4 for years?

5 A. No.

6 Q. You didn't hear of that case?
7 Hundreds of cases, hundreds of pictures
8 found on his computer.

9 A. No, I didn't hear that one.

10 Q. That was big news.
11 How about, did you ever hear of
12 someone named Michael Sabo?

13 A. He's a principal in Torah
14 Vodaas, no?

15 Q. Not exactly. He's doing 25
16 years for taking pictures of his neighbors'
17 little boys and putting them on the
18 internet.

19 A. I'm thinking of a different
20 Sabo. No.

21 Q. It was right here in Flatbush,
22 blocks from where you live.

23 You never stopped to think
24 whether the plaintiff might have been
25 victimized in some way to make that picture

1 S. DEUTSCH

2 exist; didn't even enter your mind?

3 A. No.

4 Q. And you don't even know what
5 the picture was; she might have been trying
6 on a bathing suit, for all you know?

7 A. Maybe. I don't know.

8 Q. If the plaintiff had sent that
9 picture deliberately, let's just assume,
10 you'll forgive me for using a hypothetical,
11 let's assume the plaintiff had sent that
12 picture deliberately to somebody, would you
13 agree that's something that she probably
14 needed counseling about?

15 A. Yes.

16 Q. Your school had a social worker
17 on staff?

18 A. Correct.

19 Q. Did you have the social worker
20 speak to the plaintiff about this issue?

21 A. Not about this issue. The
22 plaintiff --

23 Q. Between the time you heard
24 about the photograph and the time you made
25 the decision to expel her, how many hours

1 S. DEUTSCH

2 passed?

3 A. I'm not sure. I really am not.
4 It could have been the next day, it could
5 have been 24 hour.

6 Q. No more than a day?

7 A. Probably not.

8 Q. In fact, you heard about it
9 late in the day, and the next morning you
10 met with the parents and told them the kid
11 was expelled, right?

12 A. Yes.

13 Q. The call came on December 9,
14 2013, correct?

15 A. I don't remember the date.

16 Q. You don't know the date?

17 A. No.

18 Q. The date wasn't really
19 important to you?

20 A. No.

21 Q. This wasn't really --

22 A. Not that it's not important. I
23 didn't record it.

24 Q. You didn't record it?

25 A. No.

1 S. DEUTSCH

2 Q. In fact, you didn't make any
3 notes, did you?

4 A. No.

5 Q. Nobody in your school made any
6 notes about this event, correct?

7 A. I don't know what they did. I
8 didn't take notes.

9 Q. The plaintiff's file does not
10 have one note about this call, correct?

11 A. I'm sure you verified that
12 already with the principals.

13 Q. In preparing for this
14 deposition, did you see any contemporaneous
15 notes taken about the call?

16 A. No.

17 Q. Did you -- and you say you
18 didn't take any notes about what you were
19 told, or what --

20 A. Correct.

21 Q. -- or what -- or your decision
22 making process?

23 A. Correct.

24 Q. Did you take any notes on your
25 meeting with the parents?